



Montana Legislative History

Chapter: 241

Session L: 1999

Checklist of Bill History

Bill Number: 382

House

History and Final Status Sheet ☒

Introduced Bill ☒

Fiscal Note ☐

Third Reading Bill ☒

Final Version of Bill ☒

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): January 28, 1999	Hearing Date(s): March 22, 1999
Committee Report:	Committee Report:
Conference Committee	

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: FLR

Date: September 29, 2023

Notes: Compiled for member of the judiciary. Unfortunately, all of the committee minutes for the House and Senate in 1999 were not written down. You will have to contact the Montana Historical Society and request Audio tapes of the hearings.

Summary minutes and Exhibits added January 16, 2024 by SMG.

~~must~~ shall allow as costs the money paid ~~and attorney fees incurred~~ for filing and recording the lien and a reasonable ~~attorney's fee~~ attorney fees in the district and supreme courts, ~~and such~~. The costs and attorneys' attorney fees must be allowed to each claimant whose lien is established, and ~~such the~~ reasonable attorneys' attorney fees must be allowed to the defendant against whose property a lien is claimed, if ~~such the~~ lien ~~be~~ is not established.

(2) In an action to foreclose any of the liens provided for by part 3, 4, 5, 6, 8, or 10 of this chapter, a defendant may make an offer of judgment as authorized in Rule 68, M.R.Civ.P. If the lienholder rejects the offer to allow judgment to be taken against the defendant and the lienholder obtains a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs allowed under Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made."

Section 2. Section 71-3-131, MCA, is amended to read:

"71-3-131. Acknowledgment of lien satisfaction — penalty. Whenever (1) Subject to subsection (2), when a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, ~~it is the duty of~~ the creditors to shall acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, ~~he the~~ creditor is liable to any person injured by ~~such the~~ failure for a civil penalty of \$100, plus any other damages provided by law.

(2) If the owner of the property against which a lien is filed pays the underlying claim before an action is filed on that claim or to foreclose the lien, the owner of the property against which the lien was filed shall pay the lienholder's costs and attorney fees incurred for filing and recording the lien before the lien may be released."

Approved April 5, 1999

CHAPTER NO. 241

[HB 382]

AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice to jurors. The clerk of court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonable efforts to require the person to respond to the notice.

Section 2. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the

most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. ~~The numbers must be consecutive from "1" to the total number of jurors.~~ A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. (1) A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by ~~him~~ the clerk in ~~his~~ the clerk's office.

(2) A copy of the latest jury list and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 4. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner — jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

~~(1)(2)~~ A county jury commissioner may by order establish the use of either a jury box, as provided in subsection ~~(2)~~ (3), or a computer database, as provided in subsection ~~(3)~~ (4), as the means for selecting jurors in the county.

~~(2)(3)~~ If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror ~~shall~~ must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips ~~shall~~ must be placed in a box of ample size to permit them to be thoroughly mixed. The box ~~shall~~ must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used ~~which~~ that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number ~~thereon~~ on the slip. The box ~~shall~~ may contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

~~(3)(4)~~ If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized database."

Section 5. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned.

(1) ~~At least once each year in each county, when~~ If a civil or criminal case has

been at issue and ready for trial for more than 6 months and the plaintiff or defendant ~~in such case~~ has requested a jury trial; or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and ~~no~~ a jury is *not* in attendance, the court ~~must make an~~ *shall* order directing a trial jury to be drawn and summoned to attend before ~~said~~ the court. ~~Such~~ The order must specify the number of jurors to be drawn. The time at which the jurors are required to attend ~~must be~~ *is* at the discretion of the court.

(2) The court may direct that ~~such causes, either a~~ criminal or civil, *proceeding* in which a jury may be required or ~~in which a jury~~ may have been demanded be continued and fixed for trial *at a time* when a jury ~~shall~~ *will* be in attendance.

~~(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.~~

~~(4)~~(3) The judge or judges of a district or the judge of a department may designate that jury service in ~~his or their~~ *the* district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at ~~such~~ a trial.

~~(5)~~(4) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) ~~or (4)~~ may be required to serve."

Section 6. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing — how conducted. (1) (a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. ~~Thereafter the~~ The jury commissioner shall *then* draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized database, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. ~~A copy of the latest jury list and a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.~~

(2) A record of the drawing shall *must* be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

~~(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.~~

~~(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available."~~

Section 7. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) ~~Whenever~~ *If* it appears to a district judge that additional jurors will be needed for ~~any term~~ *or a trial*, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) ~~When~~ *If* the judge believes that securing the additional jurors from ~~all of the whole county~~ would cause unnecessary delay or expense, ~~he the judge~~ may order the jurors selected from only a designated portion of the county, which ~~portion shall never~~ *may not* be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, ~~that the~~ juror's name or number ~~shall~~ *must* be returned to the jury box or reinstated on the computer database and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 8. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) ~~At the opening of court on~~ *On* the day ~~that~~ trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

(2) ~~The names of the jurors present and not excused must be written on separate ballots with the names concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots he is about to draw."~~

Section 9. Repealer. Sections 3-15-502 and 3-15-505, MCA, are repealed.

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 3, chapter 15, part 4, and the provisions of Title 3, chapter 15, apply to [section 1].

Approved April 5, 1999

CHAPTER NO. 242

[HB 437]

AN ACT CLARIFYING THE INFORMATION THAT A TELEPHONE COMPANY MAY RELEASE TO EMERGENCY COMMUNICATIONS SYSTEMS PERSONNEL; AMENDING SECTION 27-1-735, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-735, MCA, is amended to read:

Bill Draft Number: LC1470

Bill Type - Number: HB 382

Short Title: Clarify provisions related to jury lists and jurors

Primary Sponsor: Sam Rose (R) HD 87

Chapter Number: 241

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 42

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/06/1999			
(H) Signed by Governor	04/05/1999			
(H) Transmitted to Governor	03/31/1999			
(C) Printed - New Version Available	03/31/1999			
(S) Signed by President	03/30/1999			
(H) Signed by Speaker	03/30/1999			
(H) Returned from Enrolling	03/29/1999			
(H) Sent to Enrolling	03/29/1999			
(S) Returned to House	03/27/1999			
(S) 3rd Reading Concurred	03/27/1999	47	1	
(C) Printed - New Version Available	03/27/1999			
(S) 2nd Reading Concurred	03/27/1999	49	0	
(S) Scheduled for 2nd Reading	03/27/1999			
(S) Scheduled for 2nd Reading	03/26/1999			
(S) Committee Report--Bill Concurred	03/24/1999			(S) Judiciary
(S) Committee Executive Action--Bill Concurred	03/24/1999	8	0	(S) Judiciary
(S) Hearing	03/22/1999			(S) Judiciary
(S) Referred to Committee	02/03/1999			(S) Judiciary
(S) First Reading	02/03/1999			
(H) Transmitted to Senate	02/02/1999			
(H) 3rd Reading Passed	02/02/1999	99	0	
(H) Scheduled for 3rd Reading	02/02/1999			
(H) 2nd Reading Passed	02/01/1999	99	0	
(H) Scheduled for 2nd Reading	02/01/1999			
(H) Committee Report--Bill Passed	01/30/1999			(H) Judiciary
(H) Committee Executive Action--Bill Passed	01/29/1999	15	0	(H) Judiciary
(H) Hearing	01/28/1999			(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/25/1999			
(H) Referred to Committee	01/25/1999			(H) Judiciary
(H) First Reading	01/25/1999			
(H) Introduced	01/25/1999			
(C) Draft Delivered to Requester	01/25/1999			

(C) Draft Ready for Delivery	01/22/1999
(C) Draft in Assembly/Executive Director Review	01/22/1999
(C) Draft in Final Drafter Review	01/22/1999
(C) Bill Draft Text Available Electronically	01/22/1999
(C) Draft in Input/Proofing	01/22/1999
(C) Draft to Drafter - Edit Review [JLN]	01/22/1999
(C) Draft in Edit	01/22/1999
(C) Draft in Legal Review	01/21/1999
(C) Draft to Requester for Review	01/16/1999
(C) Draft Request Received	01/04/1999

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Rose	Sam
Drafter	MacMaster	John
Primary Sponsor	Rose	Sam

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Juries and Jurors (see also: Courts)		Simple	JUR

Additional Bill Information

Fiscal Note Probable: No

Preintroduction Required: N

Session Law Ch. Number: 241

DEADLINE

Category: General Bills

Transmittal Date: 02/24/1999

Return (with 2nd house amendments) Date: 04/01/1999

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-99	

HOUSE BILL NO. 382

INTRODUCED BY S. ROSE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Notice to jurors. The clerk of court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonable efforts to require the person to respond to the notice.

Section 2. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. ~~The numbers must be consecutive from "1" to the total number of jurors.~~ A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. (1) A list of the names of the persons selected, showing the place

of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by ~~him~~ the clerk in ~~his~~ the clerk's office.

(2) A copy of the latest jury list and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 4. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner -- jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(1)(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (2) (3), or a computer database, as provided in subsection (3) (4), as the means for selecting jurors in the county.

(2)(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror shall must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall must be placed in a box of ample size to permit them to be thoroughly mixed. The box shall must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon on the slip. The box shall may contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

(3)(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized database."

Section 5. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in

~~each county, when~~ If a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant ~~in such case~~ has requested a jury trial; or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and ~~no~~ a jury is not in attendance, the court ~~must~~ ~~make an~~ shall order directing a trial jury to be drawn and summoned to attend before ~~said~~ the court. ~~Such~~ The order must specify the number of jurors to be drawn. The time at which the jurors are required to attend ~~must be~~ is at the discretion of the court.

(2) The court may direct that ~~such causes, either a~~ criminal or civil; proceeding in which a jury may be required or ~~in which a jury~~ may have been demanded be continued and fixed for trial at a time when a jury ~~shall~~ will be in attendance.

~~(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.~~

~~(4)~~(3) The judge or judges of a district or the judge of a department may designate that jury service in ~~his or their~~ the district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at ~~such~~ a trial.

~~(5)~~(4) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) ~~or (4)~~ may be required to serve."

Section 6. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing -- how conducted. (1) (a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. ~~Thereafter the~~ The jury commissioner shall then draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized database, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. ~~A copy of the latest jury list and a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.~~

(2) A record of the drawing ~~shall~~ must be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

~~(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.~~

~~(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available."~~

Section 7. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) ~~Whenever~~ If it appears to a district judge that additional jurors will be needed for ~~any term or a~~ trial, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) ~~When~~ If the judge believes that securing the additional jurors from ~~all of the~~ whole county would cause unnecessary delay or expense, ~~he the judge~~ may order the jurors selected from only a designated portion of the county, which ~~portion shall never~~ may not be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, ~~that the~~ juror's name or number ~~shall~~ must be returned to the jury box or reinstated on the computer database and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 8. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) ~~At the opening of court on~~ On the day that trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

~~(2) The names of the jurors present and not excused must be written on separate ballots with the names~~

1 ~~concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding.~~
2 ~~The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots~~
3 ~~he is about to draw."~~

4

5 NEW SECTION. **Section 9. Repealer.** Sections 3-15-502 and 3-15-505, MCA, are repealed.

6

7 NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an
8 integral part of Title 3, chapter 15, part 4, and the provisions of Title 3, chapter 15, apply to [section 1].

9

- END -

HOUSE BILL NO. 382

INTRODUCED BY S. ROSE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Notice to jurors. The clerk of court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonable efforts to require the person to respond to the notice.

Section 2. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. ~~The numbers must be consecutive from "1" to the total number of jurors.~~ A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. (1) A list of the names of the persons selected, showing the place

of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by ~~him~~ the clerk in ~~his~~ the clerk's office.

(2) A copy of the latest jury list and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 4. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner -- jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(1)(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (2) (3), or a computer database, as provided in subsection (3) (4), as the means for selecting jurors in the county.

(2)(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror shall must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall must be placed in a box of ample size to permit them to be thoroughly mixed. The box shall must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon on the slip. The box shall may contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

(3)(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized database."

Section 5. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in

1 ~~each county, when~~ If a civil or criminal case has been at issue and ready for trial for more than 6 months and the
2 plaintiff or defendant ~~in such case~~ has requested a jury trial; or whenever the business of a district court requires
3 the attendance of a trial jury for the trial of civil or criminal cases and ~~no~~ a jury is not in attendance, the court ~~must~~
4 ~~make an~~ shall order directing a trial jury to be drawn and summoned to attend before ~~said~~ the court. ~~Such~~ The
5 order must specify the number of jurors to be drawn. The time at which the jurors are required to attend ~~must be~~
6 is at the discretion of the court.

7 (2) The court may direct that ~~such causes, either a~~ criminal or civil; proceeding in which a jury may be
8 required or ~~in which a jury~~ may have been demanded be continued and fixed for trial at a time when a jury ~~shall~~
9 will be in attendance.

10 (3) ~~A district court may draw more than one trial jury in a given year if, in the opinion of the judge or~~
11 ~~judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial~~
12 ~~jury in attendance may be excused by the court from further jury duty in that year.~~

13 (4)(3) The judge or judges of a district or the judge of a department may designate that jury service in
14 ~~his or their~~ the district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused
15 for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a
16 particular cause or after having completed service at ~~such~~ a trial.

17 (5)(4) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors
18 excused under subsection (3) ~~or (4)~~ may be required to serve."

19
20 **Section 6.** Section 3-15-503, MCA, is amended to read:

21 **"3-15-503. Drawing -- how conducted.** (1) (a) If the drawing of jurors is conducted by means of a jury
22 box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved
23 a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. ~~Thereafter the~~ The
24 jury commissioner shall then draw from the box, one at a time, as many of the numbered slips as are ordered by
25 the court.

26 (b) If the drawing of jurors is conducted by means of a computerized database, it must be conducted by
27 use of a computerized random selection process that the judges of the district court of the county have approved
28 in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. ~~A copy of the latest jury list and~~
29 ~~a description of the approved computerized random selection process must be kept in the office of the clerk of~~
30 ~~court and be available for public inspection during normal business hours.~~

(2) A record of the drawing ~~shall~~ must be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

~~(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.~~

~~(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available."~~

Section 7. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) ~~Whenever~~ If it appears to a district judge that additional jurors will be needed for ~~any term or a~~ trial, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) ~~When~~ If the judge believes that securing the additional jurors from ~~all of the~~ whole county would cause unnecessary delay or expense, ~~he the judge~~ may order the jurors selected from only a designated portion of the county, which ~~portion shall never~~ may not be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, ~~that the~~ juror's name or number ~~shall~~ must be returned to the jury box or reinstated on the computer database and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 8. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) ~~At the opening of court on~~ On the day that trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

~~(2) The names of the jurors present and not excused must be written on separate ballots with the names~~

1 ~~concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding.~~
2 ~~The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots~~
3 ~~he is about to draw."~~

4

5 NEW SECTION. **Section 9. Repealer.** Sections 3-15-502 and 3-15-505, MCA, are repealed.

6

7 NEW SECTION. **Section 10. Codification instruction.** [Section 1] is intended to be codified as an
8 integral part of Title 3, chapter 15, part 4, and the provisions of Title 3, chapter 15, apply to [section 1].

9

- END -



AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Notice to jurors. The clerk of court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonable efforts to require the person to respond to the notice.

Section 2. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. ~~The numbers must be consecutive from "1" to the total number of jurors.~~ A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. (1) A list of the names of the persons selected, showing the place

of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by ~~him~~ the clerk in ~~his~~ the clerk's office.

(2) A copy of the latest jury list and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 4. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner -- jury box or computer database. (1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.

(4)(2) A county jury commissioner may by order establish the use of either a jury box, as provided in subsection (2) (3), or a computer database, as provided in subsection (3) (4), as the means for selecting jurors in the county.

(2)(3) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror shall must be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall must be placed in a box of ample size to permit them to be thoroughly mixed. The box shall must be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which that is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon on the slip. The box shall may contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

(3)(4) If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized database."

Section 5. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) ~~At least once each year in each county, when~~ If a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant ~~in such case~~ has requested a jury trial; or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and ~~no~~ a jury is not in attendance, the court ~~must make an~~ shall order directing a trial jury to be drawn and summoned to attend before ~~said~~ the court. ~~Such~~ The order must specify the number of jurors to be drawn. The time at which the jurors are required to attend ~~must be~~ is at the discretion of the court.

(2) The court may direct that ~~such causes, either a~~ criminal or civil; proceeding in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial at a time when a jury ~~shall~~ will be in attendance.

~~(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.~~

~~(4)~~(3) The judge or judges of a district or the judge of a department may designate that jury service in ~~his or their~~ the district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at ~~such~~ a trial.

~~(5)~~(4) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) ~~or (4)~~ may be required to serve."

Section 6. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing -- how conducted. (1) (a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. ~~Thereafter the~~ The jury commissioner shall then draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized database, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. ~~A copy of the latest jury list and~~

~~a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.~~

(2) A record of the drawing ~~shall~~ must be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

~~(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.~~

~~————(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available."~~

Section 7. Section 3-15-506, MCA, is amended to read:

"3-15-506. Obtaining additional jurors when necessary. (1) ~~Whenever~~ If it appears to a district judge that additional jurors will be needed for ~~any term or a~~ trial, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) ~~When~~ If the judge believes that securing the additional jurors from ~~all of the~~ whole county would cause unnecessary delay or expense, ~~he the judge~~ may order the jurors selected from only a designated portion of the county, which ~~portion shall never~~ may not be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, ~~that the~~ juror's name or number ~~shall~~ must be returned to the jury box or reinstated on the computer database and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 8. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) ~~At the opening of court on~~

On the day that trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

~~(2) The names of the jurors present and not excused must be written on separate ballots with the names concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots he is about to draw."~~

Section 9. Repealer. Sections 3-15-502 and 3-15-505, MCA, are repealed.

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 3, chapter 15, part 4, and the provisions of Title 3, chapter 15, apply to [section 1].

- END -

I hereby certify that the within bill,
HB 0382, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 382

INTRODUCED BY S. ROSE

AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE
PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND
3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN DAN MCGEE**, on January 28, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Robert C. Clark, Chairman (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s): HB 360, HB 382, HB 380, 1/28/1999
Date Posted: 1/25/1999
Executive Action: HB 309 and HB 327-Tabled, HB 339-Do Pass

HB 360-Do Pass As Amended

HEARING ON HB 360

Sponsor:

Rep. Molnar presented HB 360 for Rep. R. Clark.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 35}

Proponents:

Bill Kennedy, Yellowstone County Commissioner

{Tape : 1; Side : A; Approx. Time Counter : 35 - 56}

Glenna Obie, Jefferson County

{Tape : 1; Side : A; Approx. Time Counter : 56 - 66}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Rep. Molnar made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 66 - 79}

EXECUTIVE ACTION ON HB 360

Motion: REP. AHNER moved that HB 360 DO PASS.

Motion: REP. NOENNIG moved that HB 360 BE AMENDED.

Motion/Vote: REP. YOUNKIN moved that HB 360 DO PASS AS AMENDED.

Motion carried 18-0.

(Rep. Gallus and R. Clark absent during voting)

{Tape : 1; Side : A; Approx. Time Counter : 79 - 105}

HEARING ON HB 382

Sponsor:

Rep. Rose presented HB 382.

{Tape : 1; Side : A; Approx. Time Counter : 105 - 126}

Proponents:

Mary Pippen, Montana Association of District Court Clerks

{Tape : 1; Side : A; Approx. Time Counter : 126 - 151}

EXHIBIT (juh22a0

1)

Judy Gillespie, Montana Association of District Court Clerks

{Tape : 1; Side : A; Approx. Time Counter : 151 - 189}

EXHIBIT (juh22a0

2)

EXHIBIT (juh22a0

3)

EXHIBIT (juh22a0

4)

Nancy Sweeney, Lewis & Clark county Clerk of Court

{Tape : 1; Side : A; Approx. Time Counter : 189 - 215}

EXHIBIT (juh22a0

5)

EXHIBIT (juh22a0

6)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Rep. Rose made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 215 - 227}

Rep. Ahner made a motion to **Do Pass on HB 382**, Rep. Noennig requested that time be given to study the bill. Request granted

{Tape : 1; Side : A; Approx. Time Counter : 227 - 261}

HEARING ON HB 380

Sponsor:

Rep. Rehbein presented HB 380.

{Tape : 1; Side : A; Approx. Time Counter : 261 - 281}

Proponents:

John Youngberg, Montana Farm Bureau

{Tape : 1; Side : A; Approx. Time Counter : 281 - 335}

John Bloomquist, Montana Stockgrower's Association

{Tape : 1; Side : A; Approx. Time Counter : 335 - 382}

Arla Murray, Montana Cattle Women

{Tape : 1; Side : A; Approx. Time Counter : 382 - 406}

Opponents:

Van Jamison, Montana Wildlife Federation

{Tape : 1; Side : A; Approx. Time Counter : 406 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 25}

Jerry Wells, Montana Chapter of Trout Unlimited

{Tape : 1; Side : B; Approx. Time Counter : 25 - 86}

Robin Cunningham, Fishing Outfitters of Montana

{Tape : 1; Side : B; Approx. Time Counter : 86 - 111}

Jim McDermand, Russell county Sportsman

{Tape : 1; Side : B; Approx. Time Counter : 111 - 184}

EXHIBIT(ju

h22a07)

Stan Frasier, Montana Wildlife Federation

{Tape : 1; Side : B; Approx. Time Counter : 184 - 208}

Tony Schooner, Public Lands Commission

{Tape : 1; Side : B; Approx. Time Counter : 208 - 268}

Bill Hobart, Skyline Sportsman Association

{Tape : 1; Side : B; Approx. Time Counter : 268 - 302}

Janet Ellis, Montana Audubon Association

{Tape : 1; Side : B; Approx. Time Counter : 302 - 316}

John Kober, Montana Wildlife Association

{Tape : 1; Side : B; Approx. Time Counter : 316 - 328}

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 328 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 205}

Closing by Sponsor:

Rep. Rehbein made closing remarks.

{Tape : 2; Side : A; Approx. Time Counter : 205 - 242}

EXECUTIVE ACTION ON HB 309

Motion: REP. MOLNAR moved that HB 309 DO PASS.

EXHIBIT (juh22a0

8)

Motion: REP. ANDERSON moved that HB 309 BE AMENDED.

Rep. Facey requested amendment be segregated: 1-5 from 6-10.

Amendment fails; for 1-5 segregation.

Amendment for 1-6 is now discussed.

Motion/Vote: REP. HURDLE moved that HB 309 BE TABLED. Motion failed 9-11.

Motion: REP. MOLNAR moved that AMENDMENT 6-10 SEGREGATION BE AMENDED.

Motion: REP. FACEY moved that AMENDMENT FOR FISCAL MONIES BE AMENDED. Motion FAILED. Motion/Vote: REP. ANDERSON moved that HB 309 DO PASS AS AMENDED. Motion failed 9-11 with Anderson, Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Noennig, Soft, Williams, and Wyatt voting naye

Rep. Molnar moved reverse votes and TABLE, MOTION PASSED.

{Tape : 2; Side : A; Approx. Time Counter : 242 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 357}

EXECUTIVE ACTION ON HB 327

Motion: REP. YOUNKIN moved that HB 327 DO PASS.

Motion: REP. CURTISS moved that HB 327 BE AMENDED. MOTION CARRIED.

Motion/Vote: REP. SOFT moved that HB 327 BE TABLED. Motion carried 13-6 with Curtiss, Hurdle, Jore, McGee, Molnar, and Shockley voting no.

{Tape : 3; Side : A; Approx. Time Counter : 357 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 189}

EXECUTIVE ACTION ON HB 339

Motion/Vote: REP. EGGERS moved that HB 339 DO PASS. Motion carried 17-2 with Gallus and Jore voting no.

{Tape : 3; Side : B; Approx. Time Counter : 189 - 222}

ADJOURNMENT

Adjournment: 11:25 A.M.

REP. ROBERT C. CLARK, Chairman

PAM SCHINDLER, Secretary

RC/PS

EXHIBIT (juh22aad)

HB 382
REVISE JURY SELECTION PROCESS

EXHIBIT 1
DATE 1/28/09
HB 302

COMMENTS REGARDING JURY STATUTE AMENDMENTS

COMPILED BY: HONORABLE JUDGE RUSSELL C. FAGG
THIRTEENTH JUDICIAL DISTRICT

JANICE HEALTH, CLERK OF DISTRICT COURT
BIG HORN COUNTY

JEAN THOMPSON, CLERK OF DISTRICT COURT
YELLOWSTONE COUNTY

RE: Page 1, lines 24 & 25 - **"the numbers must be consecutive from '1' to the total number of jurors."** is removed because the election department reuses numbers when a voter dies or moves from the county. Therefore, the numbers that appear along with the name of the juror is the voter registration number.

Lines 11-16, page 1; Lines 5-10, page 2; and Lines 13 & 14, page 2, were moved to the section entitled "Jury Lists" because they are applicable here rather than under the section entitled "Trial Juries". The only addition in NEW SECTION. SECTION 1, on Page 1, Lines 15 & 16 are the words **"make reasonable efforts to"** followed with the present language **"require a response to the notice."** This was done at Judge Fagg's suggestion, and as we all know, sometimes the sheriff cannot require a response to the notice, despite the sheriff's best efforts.

RE: Page 3, lines 2 and 3 - **"At least once each year in each county,"** is stricken because the language is not necessary. Lines 12-14, Page 3 are stricken as most judges draw many trial juries during the term, not just one.

RE: Page 4, lines 1-3 and lines 7-11 were moved to the section entitled "Jury Lists" on page 2, lines 5 through 10. Lines 7 through 11, page 4, are presently included under "Trial Juries". The present statute says, **"....if the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn."**

Page 2, HB 382 - Comments RE: Jury Statute Amendments

This statute is currently included in the section of codes under "Trial Juries" and pertains only to developing the "Jury List". It has been moved over to the section entitled "Jury Lists" and renumbered. The words written in bold type above have been stricken for the reason that the clerks can no longer go back into the list of registered voters and draw more names as this statute dictates. If the clerk is required to continue this practice until the required number of jurors is drawn, it would take a tremendous part of the year to perfect a jury pool for the court's use. Time does not allow this.

The judge's order for jurors to be drawn to compile a "Jury List" contains a number large enough to take into account that there are a number of people who have moved from the county, died, or for various reasons are unable to serve. Because this is taken into consideration, there is no need to draw names to replace those who are excused by the court. The language on page 4, lines 12 and 13 is stricken as being unnecessary because the language in 3-15-401, and 3-15-402(1) under "Jury Lists", page 1, which states that a jury term is for one year, is very specific.

RE: Page 5, line 1, at Judge Fagg's suggestion, the beginning phrase, "At the opening of court...", is stricken, as this phrase leads to confusion that there is an opening day of court, as opposed to simply calling jurors for a specific trial. Lines 4 through 7, on page 5, were also stricken as this appears to be duplicative language and already covered in other parts of the statute.

**Office of
CLERK OF DISTRICT COURT**

Thirteenth Judicial District

BIG HORN COUNTY

Hardin, Montana 59034

(406) 665-1504 - Phone

(406) 665-1540 - Fax

EXHIBIT 2

DATE 1/27/99

HB 382

Janice Heath, Clerk
Michelle Massine, Deputy
Karen Jean Yarlott, Deputy

JUDGES

Hon. Diane G. Barz
Hon. Russell C. Fagg
Hon. Maurice R. Colberg, Jr.

January 26, 1999

House Judiciary Committee
Montana State Capitol
Helena, Montana 59620

RE: HB 382, CLARIFICATION OF JURY LISTS AND JUROR PROVISIONS

Dear Committee Members:

I am writing in support of HB 382 and am asking that you give it a "DO PASS" recommendation. HB 382 has no fiscal impact.

In 1996, the method used for drawing and selecting jurors in Big Horn County was challenged, although Big Horn County's jury selection procedure is the same procedure that is used throughout the Thirteenth Judicial District and the State of Montana. Since it is very difficult, if not impossible, to comply with the jury statutes as they are presently written, especially since computerization, the amendments in HB 382 are proposed to make it easier for the Jury Commissioners and the District Judges to follow the law.

In a case in which jury selection became an issue, District Judge Russell C. Fagg stated in one of his Orders, "...A reading of Sections 3-15-401, through 509, MCA, many of which were originally enacted in 1895, shows the need for a careful review of the statutes and amendments of these statutes in conformity with current practices of Jury Commissioners state-wide. The Court hopes such a review could be accomplished, perhaps by the Clerk of District Court Association, by the 1999 legislative session."

Judge Fagg's suggestion gave rise to HB 382, and again, I ask that you give it a "DO PASS" recommendation.

Very truly yours,



Janice Heath
Clerk of District Court
Big Horn County

EXHIBIT

3

DATE

1/28/99

HB

382

BIG HORN COUNTY
CLERK AND RECORDER
PO BOX 908
HARDIN, MT 59034
(406)665-1506

January 26, 1999

Nancy Sweeney
Lewis & Clark County

RE: House Bill #382

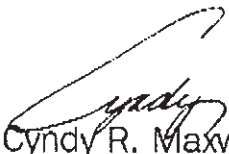
Dear Ms. Sweeney:

I was recently made aware of the above House bill concerning jury lists and juries. I would like to lend my support to this bill.

Big Horn County has had several problems in the past which would be rectified upon the passage and approval of House Bill #382.

Please give House Bill #382 a "DO PASS" recommendation.

Respectfully,



Cyndy R. Maxwell
Big Horn County Clerk and Recorder

EXHIBIT 4DATE 1/28/99HB 382**BIG HORN COUNTY ATTORNEY**

Christine A. Cooke
County Attorney

P.O. BOX 908
121 West Third Street
Hardin, MT 59034
(406) 665-2255
facsimile: (406) 665-2259

Curtis L. Bevolden
Deputy County Attorney

January 27, 1999

House Judiciary Committee
Montana State Capitol
Helena, MT 59620

Re: House Bill 382

Dear Committee Members:

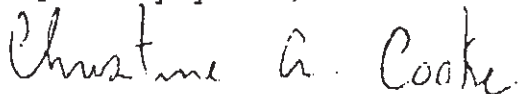
I write as a proponent of House Bill 382, which I understand is scheduled for hearing during the morning hours of January 28, 1999. I ask that you recommend "DO PASS."

The proposed legislation clarifies the manner in which a trial jury is drawn and reflects the manner in which all Clerks Of Court presently select a jury. At best, the law as it exists is antiquated, because many of the provisions have never been amended since enactment in 1895. While these provisions may have been appropriate 100 years ago, they are out of step with the upcoming new millennium.

At worst, the current law is confusing. Practically speaking it gives no clear guidance to the jury commissioner as to the specifics of drawing a jury panel. I was recently involved in civil litigation wherein both plaintiffs' counsel and defense counsel were confounded by the intricacies of the panel selection provisions. It would not surprise me were this issue to come before the Supreme Court.

Again, I ask that you recommend "DO PASS." If you have any questions, please do not hesitate to contact me.

Very truly yours,



Christine A. Cooke
County Attorney
Big Horn County

CAC/cac

Yellowstone County

JEANA. THOMPSON
CLERK OF THE DISTRICT COURT

January 28, 1999

House Judiciary Committee
Montana House of Representatives
State Capitol
Box 201701
Helena, MT 59620-1701

(406) 256-2851-Civil Division
(406) 256-2860-Criminal Division
P.O. BOX 35030
BILLINGS, MT 59107-5030



EXHIBIT

5

DATE

1/28/99

HB

382

To Members of the Montana House Judiciary Committee:

My name is Jean A. Thompson and I am the Clerk of District Court for Yellowstone County. I respectfully submit the following comments concerning HB 382.

The jury statutes have not been revised for some time and presently cannot be followed to the letter of the law by the Clerks of District Court when drawing jurors for a jury pool. For example, jurors are drawn from the list of registered voters in each county. The present statute states that the jury list when drawn must be numbered consecutively from 1 to the total number of jurors. Each registered voter is given a registration number today and when a voter dies or the name removed from the voter registration list, that number may be used for another voter, but no two registered voters would ever have the same number. The voter registration number is the number used to identify jurors as well.

The juror pool is drawn from the list of registered voters on the date the list is certified by the County Commissioners and of the Court's order to draw jurors for the coming year. The present statutes says.....if the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

The proposed change omits the words and another name shall be drawn in its place.....The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

There are two reasons this part of the statute cannot be followed to the letter. First, the list of registered voters does not remain the same all the time. There are new people being registered to vote and if their name was not on the voter registration list on the date the list was certified and of the Court's order for

jurors, then they were not eligible to become jurors.

Presently it takes the Clerks in Yellowstone County most of the summer to get a jury list perfected for the Court by September 1st. This requires that a questionnaire be returned by each prospective juror and they are given the opportunity to return an Affidavit to Claim Excusal if necessary. The Court has to go through the Affidavits to determine who will be excused. If they have to continue this procedure until the number of jurors ordered has been drawn, they would not have a perfected list of jurors by the 1st of September, or even by the end of the year. The Clerks then enter all of this information in the computer (i.e., permanent excusals, temporary excusals, etc.) so that when the judge orders that a jury be drawn for a trial date, only eligible jurors are in the pool to be drawn from.

The Clerk of District Court is the Jury Commissioner....the section (3-15-502) was moved under JURY LISTS so that the duties and this section are together.

Notice to jurors (3-15-505) was also moved under JURY LISTS as this section pertains to serving notice to the prospective jurors after their name has been drawn from the registered voter list. In Yellowstone County a Jury Notice is mailed out advising the person that their name has been drawn as a prospective juror to serve in the department (for the judge) in the coming year. They also receive a letter from the Jury Commissioner advising them of the importance of this service and sending a Questionnaire form, an Affidavit to Claim Excusal, and a return envelope to return the completed questionnaire. If a person fails to respond to the notice, the clerk shall certify this failure to the sheriff who shall then serve notice personally on such person and require a response to the notice. The only other change here is**the sheriff who shall serve notice personally on such person and make reasonable efforts to require a response to the notice.**

The second reason is the Court orders enough jurors drawn realizing that there are a number who will be unable to serve, have moved, or for various other reasons must be excused from serving as a juror. This eliminates the need to draw additional names and also enables the clerk to perfect a jury list in time to have jurors drawn for trial by September 1st.

Respectfully submitted,



Jean A. Thompson
Clerk of District Court

THIRTEENTH JUDICIAL DISTRICT COURT

217 North 27th Street
Billings MT 59102
(406) 256-2906

MEMORANDUM

TO: House Judiciary Committee

FROM: Russell C. Fagg, District Court Judge *R.C.F.*
Diane G. Barz, District Court Judge *DB*
Susan P. Watters, District Court Judge *SPW*
G. Todd Baugh, District Court Judge *GTS*
Maurice R. Colberg, Jr., District Court Judge *MR Colberg*

DATE: January 28, 1999

RE: House Bill 382 (Jury Bill)

Please vote "Yes" on House Bill 382. This bill is necessary to bring into conformity the way jury trials are being conducted currently in our State District Courts. The current law is antiquated and needs the minor revisions this bill provides.

This bill: (1) places the code sections regarding "Jury Lists" and "Trial Juries" in their correct place (somehow current law mixed the two in certain areas); and (2) allows the Jury Commissioner to not draw another juror if a juror is excused because of death, a move out of county, or incompetence. Judges currently take into consideration that some jurors will be excused when we tell the Jury Commissioner how many jurors to call for a jury term.

The need for this bill became readily apparent to Judge Fagg when he had a civil jury trial in Big Horn County last year. One of the attorneys, based upon his interpretation of the current statute, wanted to call all 1000 jurors to an opening day of court to see who would attend and who would not attend. Of course, having 1/6th of Big Horn County appear for an opening day of court simply to see who would attend is not feasible, nor mandated by current law. However, this attorney insisted the current law called for this. This is one gray area the bill clears up.

Also, after the actual jury trial for this case was called, this attorney wanted the court to take a break after it was determined which jurors were there and which jurors weren't, so that we could send the Big Horn County Sheriff after those jurors who did not appear. Again, this is impractical, and not mandated by current law. It is impractical because you have approximately 60 jurors who do appear and its not fair to make them wait a half a day or a day while the Sheriff rounds up the remaining jurors. Currently, if a juror does not appear, then we order them into court at a later date to show cause why they did not appear. These jurors are subject to a fine. However, again, this attorney believed the current antiquated law required this procedure. This is another gray area this bill clears up.

The current law is old, difficult to read, and needs clarification, which House Bill 382 provides.

We could go into other parts of the bill in detail. However, suffice to say, we wholeheartedly support House Bill 382. Thank you.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 29, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Brad Molnar (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s): HB 374, HB 371,
Date Posted: 1/27/1999
Executive Action: HB 380 & SB 24 Tabled

HB 382-Do Pass
SB 20-Be concurred in as
amended

HEARING ON HB 374

Sponsor:

Rep. Hurdle presented HB 374.

{Tape : 1; Side : A; Approx. Time Counter : 29 - 63}

Proponents:

Sandy Oitzinger, Montana Juvenile Probation Officers Association

{Tape : 1; Side : A; Approx. Time Counter : 63 - 91}

Roberta Drew, Juvenile Public Defender, Billings

{Tape : 1; Side : A; Approx. Time Counter : 91 - 117}

Debbie Waddell, Montana Association of Churches

{Tape : 1; Side : A; Approx. Time Counter : 117 - 168}

Sharon Hoff, Montana Catholic Conference

{Tape : 1; Side : A; Approx. Time Counter : 168 - 187}

Jane McCall, Youth Justice Council

{Tape : 1; Side : A; Approx. Time Counter : 187 - 204}

Opponents:

None

Informational Testimony:

Allen Horsfal, Board of Crime Control

{Tape : 1; Side : A; Approx. Time Counter : 204 - 348}

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 348 - 550}

{Tape : 1; Side : B; Approx. Time Counter : 0 - 128}

EXHIBIT (juh23a0

1)

Closing by Sponsor:

Rep. Hurdle made closing statements.

{Tape : 1; Side : B; Approx. Time Counter : 128 - 146}

EXECUTIVE ACTION ON HB 382

Motion/Vote: REP. SHOCKLEY moved that HB 382 DO PASS. Motion carried 15-0.

(Rep. P. Clark, Wyatt, Kitzenberg, Gallus and Curtis absent during voting.)

{Tape : 1; Side : B; Approx. Time Counter : 146 - 230}

EXECUTIVE ACTION ON SB 8

Motion: REP. YOUNKIN moved that SB 8 BE CONCURRED IN. REP. EGGERS moved that SB 8 be POSTPONED; MOTION PASSED.
{Tape : 1; Side : B; Approx. Time Counter : 230 - 335}

HEARING ON HB 371

Sponsor:

Rep. Cobb presented HB 371.

{Tape : 1; Side : B; Approx. Time Counter : 335 - 381}

Proponents:

Craig Reap, Montana Highway Patrol

{Tape : 1; Side : B; Approx. Time Counter : 381 - 417}

EXHIBIT (juh23a0

2)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 417 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 10}

Closing by Sponsor:

Rep. Cobb made closing statements.

{Tape : 2; Side : A; Approx. Time Counter : 10 - 20}

EXECUTIVE ACTION ON HB 380

Motion: REP. ANDERSON moved that HB 380 DO PASS.

Motion/Vote: REP. EGGERS moved that HB 380 BE TABLED. Motion carried 12-8 with R. Clark and Curtiss, Jore, Kitzenberg, McGee, Molnar, Younkin, and Anderson voting no.

{Tape : 2; Side : A; Approx. Time Counter : 20 - 290}

EXECUTIVE ACTION ON SB 20

Motion: REP. YOUNKIN moved that SB 20 BE CONCURRED IN.

Motion/Vote: REP. NOENNIG moved that SB 20; DELETE LINE 18-19 PG 2 BE AMENDED. Motion carried 14-6.

Motion/Vote: REP. YOUNKIN moved that SB 20 BE CONCURRED IN AS AMENDED. Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : A; Approx. Time Counter : 290 - 405}

EXECUTIVE ACTION ON SB 24

Motion/Vote: REP. YOUNKIN moved that SB 24 BE CONCURRED IN.

Motion failed 4-16 with Clark, Kitzenberg, McGee, and Molnar voting aye.

Motion made for reverse vote and TABLE: MOTION PASSED

{Tape : 2; Side : A; Approx. Time Counter : 405 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 72}

Rep. Younkin asked the committee if HB 309 (Rep. Molnar) could be reconsidered; MOTION TO RECONSIDER was denied as Rep. Molnar was not present during this action

EXHIBIT (juh23a0

3)

ADJOURNMENT

Adjournment: 10:03 A.M.

REP. ROBERT C. CLARK, Chairman

PAM SCHINDLER, Secretary

RC/PS

EXHIBIT (juh23aad)

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 22, 1999
at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 109, HB 257, HB 308, HB
382, 3/19/1999
Executive Action: None

HEARING ON HB 382

Sponsor: REP. SAM ROSE, HD 87, Teton and Cascade Counties

Proponents: Mary Phippen, Clerks of District Court
Laurie Maloney, Clerk of District Court, Butte-
Silver Bow County

Opponents: None

Opening Statement by Sponsor:

REP. SAM ROSE, HD 87, Teton and Cascade Counties introduced HB 382 which was requested by the Clerks of Court. It involves the method in which jurors are drawn and placed in the jury pool.

Proponents' Testimony:

Mary Phippen, Clerks of District Court, presented her written testimony, **EXHIBIT**(jus64a01).

Laurie Maloney, Clerk of District Court, Butte-Silver Bow County, requested that the changes be made due to a challenge as to how jurors were drawn and placed into the jury pool.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

None

{Tape : 1; Side : A; Approx. Time Counter : 10.08}

Closing by Sponsor:

REP. ROSE summarized that the amendments were needed and necessary in order to eliminate the confusion in interpretation and to allow conformity.

{Tape : 1; Side : A; Approx. Time Counter : 10.10}

HEARING ON HB 109

Sponsor: REP. JOHN MERCER, HD 74, Polson

Proponents: Attorney General Joe Mazurek
 Jim Opedahl, Administrator of the Gambling Control
 Division of the Department of Justice
 Larry Epstein, Chairman of the Gaming Advisory
 Council
 Mick Robinson, Governor's Office
 Mark Staples, Montana Tavern Association
 Dennis Casey, Gaming Industry Association

**Jerry Driscoll, Montana Independent Machine
Operators Association
Ronna Alexander, Power House Technologies
Rhonda Carpenter, Montana Coin Machine Operators
Association**

**Opponents: Sharon Hoff, Montana Catholic Conference
Betty Waddell, Montana Association of Churches
Ellen Engstedt, Don't Gamble with the Future
Verner Bertelsen, Montana Senior Citizens
Association**

Opening Statement by Sponsor:

REP. JOHN MERCER, HD 74, Polson, introduced HB 109 which is referred to as the dial-up bill. It will create an automated accounting and reporting system for video gaming machines. This is something the legislature has been trying to address for a number of sessions.

When Montana started in the automated gaming business, automated accounting and reporting was not set into place. As a result, each machine is a separate taxing entity. This is all reported on paper and is a very out-of-date system. This bill is voluntary in nature. There is a tax credit of \$250 as an incentive to those using this system. Loans will be provided to help people make the changeover. The state will save time, trouble and effort with automated reporting. The cost of making this change is paid for by the gaming licenses taxes that are paid by the gaming machine owners.

There is a small provision that allows for an existing keno and poker machine to have a switch which would allow a single machine to play either game. Some argue that this is an expansion of gaming.

{Tape : 1; Side : A; Approx. Time Counter : 10.13}

Proponents' Testimony:

Attorney General Joe Mazurek rose in support of HB 109. He thanked representatives of the gaming industry who all had a hand in shaping this bill. The Gaming Advisory Council has studied this issue and unanimously endorsed the legislation. This reflects an agreement between regulators and the industry.

He has confidence that this voluntary measure will result in 70% compliance. Last session 60% of the owners of machines in the state were willing to connect to a voluntary system. This system

provides efficiency, elimination of record keeping requirements, and added accuracy. A bill will be sent to machine operators every quarter based on readings taken from the machines. The operators would simply pay their tax and not file paper returns. Tapes would need to be kept for only a short period of time. There is a \$250 tax credit available during a two year window. It will encourage people to switch to this more efficient system.

The multi-game box aspect is simply an advancement in technology and allows machine owners to have a keno machine and a poker machine in the same box. This should help the owners in small establishments and may result in a decrease in machines.

{Tape : 1; Side : A; Approx. Time Counter : 10.18}

Jim Opedahl, Administrator of the Gambling Control Division of the Department of Justice, remarked that very little automation has touched the world of video gambling accounting and reporting. It is sorely needed for both the state agency responsible for regulation as well as the video gambling operator. There are about 18,000 video gambling permits issued each year in 1700 locations across the state. In FY98, there was close to \$600 million wagered in those machines. The state collected close to \$40 million in taxes. His office receives approximately 70,000 quarterly reports a year. They store these reports for only three years due to lack of storage. Every time a machine is serviced or has a problem, the operator is responsible for turning in a service report. In FY96, there were 51 feet of paper used for the service reports. There are approximately 600,000 to 900,000 audit rolls in storage in the state at any one time. Operators are required to keep the audit rolls for a three year period. These rolls are audited manually.

He provided three handouts: General Components of an Automated Accounting and Reporting System, **EXHIBIT(jus64a02)**, Department of Justice overview of the Automated Accounting and Reporting System, **EXHIBIT(jus64a03)**, and The Gambling Control Division Biennial Report for FY97 and FY 98, **EXHIBIT(jus64a04)**.

Larry Epstein, Chairman of the Gaming Advisory Council, rose in support of HB 109. Besides legislative members, the Council has representatives from the public at large, local government, and the gambling industry. They study the administration of gambling laws and recommend improvements to the Attorney General and the Legislature. He added that there is a broad consensus that the time has arrived to automate the accounting and reporting functions of the Gambling Control Division and the video gambling machine operators.

Mick Robinson, Governor's Office, rose in support of HB 109.

{Tape : 1; Side : A; Approx. Time Counter : 10.27}

Mark Staples, Montana Tavern Association, remarked that it is important that this be voluntary in nature. This is an expensive proposition and will be the first changeover of midstream gaming regulation. Some people will not be able to afford the changes. The least expensive and most effective system will be negotiated. Each machine must be converted if it can be converted. The estimates they have received are from \$400 to \$800 a machine. By keeping this voluntary, the bidding process will be competitive. The conversion and machine kits will need to be kept competitive to arrive at the 70% commitment.

The tax credits are for \$250 per machine. The least expensive bid on the conversion kits is between \$600 and \$800 and it could be higher. The industry is mostly composed of small bars and taverns with an average of eight or nine machines. These businesses are run by families. The growth in the industry has more than provided enough funds to cover the tax credits without robbing the General Fund. The fiscal note states that \$750,000 will be found by the efficiencies of the system. It is necessary to sign up for this system within the next two years to receive the tax credits.

The chip which changes one feature in a machine, does not provide any more machines, players, or games. Perhaps the small owner can reduce the number of machines because patrons can wait to play the same machine.

{Tape : 1; Side : A; Approx. Time Counter : 10.37}

Dennis Casey, Gaming Industry Association, rose in support of HB 109.

Jerry Driscoll, Montana Independent Machine Operators Association, remarked that its largest member has committed to signing up all its machines if the cost is reasonable.

Ronna Alexander, Power House Technologies, commented that they manufacture video gaming machines. Their headquarters are in Bozeman and they employ approximately 350 people. They offer a commitment of their machines to the online system when it is in place.

Rhonda Carpenter, Montana Coin Machine Operators Association, stated that they are the route operators in this industry. They fully support the system.

{Tape : 1; Side : A; Approx. Time Counter : 10.39}

Opponents' Testimony:

Sharon Hoff, Montana Catholic Conference, raised a concern about the social impacts of gaming on communities. As gaming increases, they see higher incidents of problem and impulsive gamblers. They do see the multi-game cabinet as an expansion of gambling. It could keep people at the gambling machine longer. They are also concerned with the tax credits since this is not a mandatory system.

Betty Waddell, Montana Association of Churches, provided their position paper, **EXHIBIT(jus64a05)**. She questioned why this system is voluntary. She could not think of a single industry that is allowed voluntary inclusion on controls. Do we ask that only 70% of refineries have air quality control? Are we only asking 70% of the drivers to adhere to the speed limit? Every one of us needs to pay taxes, not just 70% of us.

There are several machines in this state that are processing more than \$100,000 a year. The gambling industry is in control of which machines will be placed on the automated system. Will the machines bringing in around \$6,000 a year be the only ones on this system?

{Tape : 1; Side : B; Approx. Time Counter : 10.45}

Why are we providing tax credits to an industry that does not provide decent wages? In a recent Legislative report, the average annual income for gambling firm employees, based on a 51 week work year, was \$9,600. This is far below poverty level. Of the 16,300 workers employed in gambling establishments, most are working in restaurants, gasoline services, or bars. The study estimates that only 3,700 workers have anything to do with video machines.

Why are we providing tax credits to an industry that brings with it a high social cost of addiction and crime. An estimated 23,400 Montanans are currently problem gamblers. If only 6% sought treatment, the cost of out patient treatment would be \$560,000 a year.

A statewide \$1 million increase in video gambling machine expenditures would be associated with 17 more burglaries, 78 more larcenies, 25 more DUIs, 43 more acts of vandalism, 6 to 7 more weapon offenses and one or two more robberies. Is the \$34

million in taxes enough to pay for the extra police, judges, prison cells, therapy, family poverty, marriage dissolutions, and other costs associated with gambling in Montana?

Why are we providing tax credits to an industry that already has the best deal in the nation in terms of actual taxes paid? The 15% tax is the lowest in the nation.

She further added that **REP. MERCER** stated that those of us who disagreed with his bill were first in line to ask for the money from the taxes. She declared that they have never done so. She has talked to mayors and county commissioners about the growing addiction in local governments with using gambling money. They are being encouraged not to use the tax money for operating expenses and suggested these funds be used for buildings, parks, etc., which are things they can live without.

The multi game package will increase gambling in this state with more people putting money in these machines. The \$600 million that is wagered in Montana is wagered by Montanans. This amounts to \$700 for every man, woman, and child in this state. Instead of going to family needs, this money is going through machines.

The 18,000 machines in use in the state multiplied by the \$250 tax credit amounts to \$4.6 million. This is an awful lot of tax credit.

Ellen Engstedt, Don't Gamble with the Future, presented her written testimony, **EXHIBIT(jus64a06)**.

Verner Bertelsen, Montana Senior Citizens Association, remarked that originally they were a proponent of the bill because they saw the possibility of changes in the bill. At this point, it is going through without any variation. There are some provisions in the bill that are not proper and should be changed. They strongly supported the bill that placed a time limit on when the conversion needs to take place. Gambling is a serious problem for Montana and we had better take control of the gambling industry and not let them take control of the state.

{Tape : 1; Side : B; Approx. Time Counter : 11.03}

Questions from Committee Members and Responses:

SEN. HALLIGAN asked whether the 70% compliance involved that 100% of the machines within an establishment were in compliance. With only 70% compliance within an establishment, the owner could leave out the machine that was the highest producing machine.

Mr. Opedahl responded that this included 70% of the machines that

can be upgraded. This is about 10,300 machines. There could be 70% of the machines in an established in compliance. The assumption is that the ones which will not be hooked up are the ones that it would be economically difficult to hook up to the system.

CHAIRMAN GROSFIELD questioned the percentage of machines within an establishment that needed to be on the system. **Mr. Opedahl** explained that the percentage is 70% of the machines on a statewide basis. This could mean that an establishment could have no machines on the system or all of them on the system.

Mr. Staples maintained that the establishments which have 20 machines will be the establishments that will be on the system. The machine owner with only eight or nine machines may only be able to afford placing four or five on the system. The premise that the high volume machine would not be hooked up is contrary to any experience they have had. That suggests a huge evidence of cheating out there. The taxes are currently being paid. The question is whether we will be electronically monitoring for efficiency. The high volume machine would be the newer machine. It would be the machine that is more player friendly and would be one of the first to be converted because it would be the least expensive to convert.

CHAIRMAN GROSFIELD questioned whether the industry might support an amendment that establishments would have to convert all machines if they were to convert any of the machines in the establishment. This would allow that all machines in an establishment which are able to be upgraded would in fact be upgraded. **Mr. Staples** insisted that some people would not be able to afford this. The 70% commitment will give the state plenty to work on for the next two years. The conversion could not take place any faster than that anyway.

SEN. JABS questioned whether the new machines needed to be on the system or whether that was optional. **Mr. Opedahl** responded that after January 1, 2001, all new machines manufactured for the Montana market must have the capability of being on the dial-up system. New owners who have bought an establishment will have some period of time for the transition to the system. A brand new owner must be on the system.

SEN. JABS inquired whether the new machines would be eligible for a tax credit. **Mr. Opedahl** explained that the machines which are eligible for the tax credit need to be on the roll as of December 31, 2000.

SEN. DOHERTY remarked that the fiscal note appeared to show that the \$1.5 million hit to the General Fund was included in the Governor's Budget. **Mr. Robinson** affirmed that it was included in the budget.

SEN. DOHERTY asked how local governments were to be made whole if this bill were adopted. **Mr. Opedahl** responded that there is a net gain of \$1.2 million each year. The \$2.5 million in tax credit is limited over a three year period. Local governments and the state each have a share in the cost of the tax credit. Two-thirds goes to the local government and one-third goes to the General Fund. The net after the three-year period is an increase of approximately \$1.2 million per year to state and local governments.

SEN. DOHERTY maintained that according to the fiscal note, in the year 2002 local governments will receive \$1.7 million less in distributions but they will gain \$750,000, or a net loss of \$968,000. How will local governments be held harmless by adoption of this bill? **Mr. Opedahl** explained that the tax credit impacts both the state and local governments. This tax credit for a three-year period would be \$2.5 million to \$3.6 million.

Mr. Staples explained that the growth has not been factored into the fiscal note. We have never had zero growth. The League of Cities and Towns believes that the investment over the short term is worth what the fiscal note claims is a \$1.2 million benefit in each year following. Local governments usually budget for a 3% growth in the gambling industry and this has averaged between 5% to 8%.

REP. MERCER maintained that the \$1.7 million credit is a one-time hit. Thereafter, there will be an additional \$750,000 annually due to efficiencies in the system.

SEN. HOLDEN remarked that in the 1995 and 1997 Legislative Sessions this issue was addressed based on the fraud aspect. The fraud aspect was not proven so he questioned the need for this process of reporting. **Attorney General Mazurek** clarified that the Legislative Auditor told the Legislature that the biggest problem in the industry was that when auditing, the backup information was not available to verify the information which had been filed. They recommended that either 23 new auditors be added or the system be automated. They have since contracted with private CPAs and the problem remains. Fraud was not alleged. Every machine is a separate taxpayer and its records are kept for five years. There are many mistakes and record keeping violations due to the pencil and paper returns that are filed. If 70% of the machines are hooked up, the audits will be

focused on fewer machines and perhaps regular audits will be more likely to be successful.

SEN. HOLDEN questioned what the taxpayer had to gain from this system. **Attorney General Mazurek** explained that the funding for the system is coming from fees paid by the gambling industry that have been paid to the Department of Justice. They have not had authority to spend these fees. This is the only industry he is aware of that is allowed to exist by the grace of the Legislature and the people of this state. Voluntarily, most cash registers are hooked up to electronic credit card machines. This is similar.

{Tape : 2; Side : A; Approx. Time Counter : 11.23}

SEN. GRIMES asked if it was pretty clear which machines could be upgraded and which could not. **Mr. Opedahl** responded that it is pretty clear on some that technologically nothing can be done to upgrade that machine. There is a small area where this will be determined dependent on cost. If the cost of upgrading is \$3,000, this would not be economically feasible.

SEN. GRIMES further remarked that in the past there have been agreements because all parties reached a consensus. In this case, a future legislature could come back and change the parameters or circumstances so that a time frame could be mandated, etc. He questioned whether the sponsor shared this understanding. **REP. MERCER** remarked that everything in the gambling industry is up in the air as far as the legislature is concerned. There may be some Constitutional protection for taking of private property. The initiative process would also be another manner in which the laws could be changed.

{Tape : 2; Side : A; Approx. Time Counter : 11.28}

Closing by Sponsor:

REP. MERCER closed on HB 109. This system is voluntary in nature. Sometimes it is good not to have government cram things down people's throat. These chips could have been placed in the machines from the beginning. State government did not want these chips. There are a number of tax deductions and credits allowed for environmental processes to comply with state laws. Currently, the Department of Justice would need 25 additional FTEs to go through the paperwork. He is very much against gambling and feels that it is a tax on stupidity. However, it is voluntary in nature. Of the \$36 million brought in on taxes last year, \$24 million went to local government and \$10 million went

to the state. This money funds schools, human service programs, tax relief, etc.

{Tape : 2; Side : A; Approx. Time Counter : 11.35}

HEARING ON HB 308

Sponsor: REP. TONI HAGENER, HD 90, Havre

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. TONI HAGENER, HD 90, Havre, introduced HB 308 which refers to the bankruptcy section of law. It involves one change on line 16 which raises the excluded limit for bankruptcy on an automobile from \$1,200 to \$2,500. Bankruptcy laws are predominantly established by the federal government but do allow some leniency to states to establish limits. This limit was set 10 years ago and has not kept up with inflationary costs. A person declaring bankruptcy still has a need for transportation for any number of purposes.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. HAGENER closed on HB 308.

{Tape : 2; Side : A; Approx. Time Counter : 11.37}

HEARING ON HB 257

Sponsor: REP. CINDY YOUNKIN, HD 28, Bozeman

Proponents: Gloria Edwards, Victim Witness Program Director
for Gallatin County
Bill Dutton, Victim
Janet Swenson, Victim's Mother
Anita Richards, Victim
Tamara Bailey Laib, Victim

**John Parker, Victim's Witness Coordinator, Fergus
County Attorney's Office**
Rebecca Bey, Yellowstone County Attorney
Dennis Paxinos, Yellowstone County Attorney
**John Connor, Department of Justice and the Montana
County Attorneys Association**
Gene Kizer, Montana Board of Crime Control
Charles Brooks, Yellowstone County Commissioners
Mona Jamison, representing Gallatin County

Opponents: **None**

Opening Statement by Sponsor:

REP. CINDY YOUNKIN, HD 28, Bozeman, introduced HB 257 which would impose a \$10 surcharge on each convicted felon or misdemeanant, excluding most traffic and Fish and Game offenses. It would apply to all crimes in Title 45 and DUIs. In Gallatin County last year, the Victim and Witnesses Advocate assisted nearly 500 victims and witnesses. Attorneys are paid much more than advocates and their time is much better spent in prosecuting cases rather than advocating for victims and witnesses. The advocate positions are currently funded with county general funds, Board of Crime Control funds, and federal funds. Victims and witnesses did not ask to be placed in these very difficult situations and their rights should be addressed. It is time that the defendants who created the problem should contribute to its solution.

Proponents' Testimony:

Gloria Edwards, Victim Witness Program Director for Gallatin County, presented her written testimony, **EXHIBIT(jus64a07)**.

Bill Dutton, Victim, explained that he was a victim of an armed robbery. A gentleman walked into his home at 5:30 a.m., pointed a gun to his head and said he would kill him if he didn't do as he was told. He knew that the person was either on drugs or alcohol and believed he could be shot at any second. He was defenseless and had no place to go. He was able to testify in court against this person. As a victim, he did not understand the rights he had. He has found out that he does have rights to know where the gentleman is at, what he is doing, testify at his parole hearings, etc. As a victim, this is very important. The Victims and Witnesses Advocate Program is very important. Ten dollars seem a very small amount for these people to pay. This should be \$50 to \$100. This is only paid by the people who commit the crimes.

{Tape : 2; Side : A; Approx. Time Counter : 11.45}

Janet Swenson, Victim's Mother, commented that in 1984, her daughter Kari was kidnaped by two men who kept her captive over night. During the rescue the next day, the perpetrators killed Allen Goldstein, shot Kari in the chest, and then escaped into the mountains. Kari was fortunate to have survived. This was a high profile case. When the criminals were caught, there were no victim's witness programs to inform them of their rights. Consequently, they learned from the news media such things as the arraignment dates, who was chosen as defense attorneys, who the prosecutor would be, etc. The Madison County Sheriff credited with capturing the fugitives was pursuing book and movie contracts. The prosecuting attorney was representing the interests in the book and movies for the sheriff. They told him that they thought this was a conflict of interest and were told he had spoken to the defense attorneys and they didn't see any problem. He also informed them that the defense attorneys requested that Kari be alone for her deposition. They did not want her parents or anyone else with her. They refused the request and insisted on accompanying her.

A local attorney urged them to hire someone to protect Kari's rights. They were shocked to realize that the defendants had attorneys provided at taxpayer expenses and the state was represented but there was no one protecting the interests of the victim. They were forced to hire an attorney to provide the advice and support that is now given by the Victim's Witness Services in their county.

All the attorneys, the sheriff, and judge continued to be interviewed by the press which violated the gag order that the judge had set down at the arraignment. No court reporter was present at the interview by the defense attorneys so there was no verbatim transcript and Kari was asked to sign a transcript in which words and entire sentences were left out. The prosecution's transcript also contained blanks. They asked the Attorney General to make a ruling on the issue. The prosecuting attorney was removed from the case and Marc Racicot, a Special Prosecutor at the Attorney General's Office, was appointed to the case. Their luck changed after his appointment. He, Judy Browning and John Connor took on the roles of victim's advocate. They guided them through two trials, protected Kari from the media, fought to keep cameras out of the courtroom and made sure that Kari was allowed to testify at the sentencing hearings. Those three attorneys observed the problems, terror, anger and helplessness of the victim and the victim's family and began to put together the infrastructure for the Victim's Witness Advocate Programs.

Anita Richards, Victim, presented her written testimony, **EXHIBIT(jus64a08)**.

Tamara Bailey Laib, Victim, presented her written testimony, **EXHIBIT(jus64a09)**.

John Parker, Victim's Witness Coordinator, Fergus County Attorney's Office, presented his written testimony, **EXHIBIT(jus64a10)**.

Rebecca Bey, Yellowstone County Attorney, rose in support of HB 257. They have helped over 3,000 victims and witnesses last year. It is time that the criminals who put victims in the system take responsibility for their actions.

Dennis Paxinos, Yellowstone County Attorney, remarked that the legislature is imposing unfunded mandates on the urban areas. They now have seven victim's assistants and no method of paying for them. They are all on grants and the grants are sun setting. The \$10 surcharge should be raised to \$50 or \$100. The \$10 surcharge will only generate \$8,000 for Yellowstone County. He asked that the language pertaining to charges collected by justice courts be eliminated. All the money needs to stay with the county and city treasurers.

John Connor, Department of Justice and the Montana County Attorneys Association, rose in support of HB 257.

Gene Kizer, Montana Board of Crime Control, rose in support of HB 257. He provided a list of crime victim programs, **EXHIBIT(jus64a11)**. There are 21 programs and nine of those programs have one more year of funding.

Charles Brooks, Yellowstone County Commissioners, rose in support of HB 257.

Mona Jamison, representing Gallatin County, rose in support of this bill. Her Helena home was burglarized. She found out that the offender had been arrested and the final disposition of what had occurred on the radio. The system is a maze. This surcharge is necessary for the offender to help pay for the services for the people that they traumatize.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked the sponsor if she had looked at expanding (a) on page 1, line 19. **REP. YOUNKIN** stated that she would not be opposed to that amendment.

SEN. HALLIGAN questioned the problems the justices of the peace viewed with allocating fines and surcharges. **Robert Throssell, Montana Magistrates Association**, explained that after the surcharges are taken out, any restitution is then paid, and the fine is split 50/50 between the city and the state. The one dollar is an administrative fee for processing the surcharge.

SEN. DOHERTY remarked that this \$10 would probably be collected for DUIs but most felons are impoverished and will not pay this surcharge. **REP. YOUNKIN** recognized that a significant number of felons do not have the resources sufficient to pay this surcharge. This needs to start somewhere. The reason this does not apply to all misdemeanors is that everyone who had a traffic offense would need to pay the surcharge. Most traffic offenses are victimless. DUIs are not victimless.

SEN. DOHERTY asked for the number of DUIs in the state on an annual basis. **REP. YOUNKIN** agreed to provide this information.

{Tape : 2; Side : A; Approx. Time Counter : 12.05}

Closing by Sponsor:

REP. YOUNKIN closed on HB 257. She would not be opposed to a broader or higher fine. The main reason for the legislation is to have those that create the need be expected to contribute to paying for the need.

ADJOURNMENT

Adjournment: 12:05 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus64aad)

STATE HOUSE COMMITTEE
JURY NO. 1
3-22-99
HB 382

MARY "MARTY" PHIPPEN
MONTANA ASSOCIATION OF CLERKS OF DISTRICT COURT
1920 BELT VIEW
HELENA MT 59601
406-261-9622

RE: **HB 382** AN ACT CLARIFYING PROVISIONS RELATED TO
JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS

Mr. Chair, Members of the Committee, my name is Mary Phippen. I represent the Montana Association of Clerks of District Court.

This Bill was submitted at the request of the Association as a result of two civil case challenges in the Thirteenth Judicial District as to the method in which jurors were drawn and placed in the jury pool.

The purpose of this Bill is simply to clarify the statutes and organize the language in the statutes so that they are easily interpreted. In addition, the amendments contained in this Bill will allow the Jury Commissioners to comply with the statutes by conforming these statutes to current practices, especially with office computerization.

Should you have any questions concerning specific amendments to certain portions of the Jury Statutes, you have been provided with a list of comments on specific Jury Statute Amendments contained in this Bill and these should provide answers to your questions. These comments were compiled by the Honorable Judge Russell C. Fagg, Thirteenth Judicial District, Janice Heath, Clerk of District Court, Big Horn County, and Jean Thompson, Clerk of District Court, Yellowstone County.

In closing, copies of this proposed Bill have been provided to the District Court Judges, to the Executive Director of the Montana Trial Lawyers Association, and to the President of the Montana Bar Association. To our knowledge, this Bill has NOT been opposed by any District Court Judge, nor by any member of the Bar. This Bill has no fiscal impact and is submitted simply to clarify some very confusing statutes.

Your **favorable** consideration of **HB 382** is greatly appreciated.
Thank you.

Mary Phippen

HB 382
REVISE JURY SELECTION PROCESS

COMMENTS REGARDING JURY STATUTE AMENDMENTS

COMPILED BY: HONORABLE JUDGE RUSSELL C. FAGG
THIRTEENTH JUDICIAL DISTRICT

JANICE HEALTH, CLERK OF DISTRICT COURT
BIG HORN COUNTY

JEAN THOMPSON, CLERK OF DISTRICT COURT
YELLOWSTONE COUNTY

RE: Page 1, lines 24 & 25 - **"the numbers must be consecutive from '1' to the total number of jurors."** is removed because the election department reuses numbers when a voter dies or moves from the county. Therefore, the numbers that appear along with the name of the juror is the voter registration number.

Lines 11-16, page 1; Lines 5-10, page 2; and Lines 13 & 14, page 2, were moved to the section entitled "Jury Lists" because they are applicable here rather than under the section entitled "Trial Juries". The only addition in NEW SECTION. SECTION 1, on Page 1, Lines 15 & 16 are the words **"make reasonable efforts to"** followed with the present language **"require a response to the notice."** This was done at Judge Fagg's suggestion, and as we all know, sometimes the sheriff cannot require a response to the notice, despite the sheriff's best efforts.

RE: Page 3, lines 2 and 3 - **"At least once each year in each county,"** is stricken because the language is not necessary. Lines 12-14, Page 3 are stricken as most judges draw many trial juries during the term, not just one.

RE: Page 4, lines 1-3 and lines 7-11 were moved to the section entitled "Jury Lists" on page 2, lines 5 through 10. Lines 7 through 11, page 4, are presently included under "Trial Juries". The present statute says, **"....if the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn."**

Page 2, HB 382 - Comments RE: Jury Statute Amendments

This statute is currently included in the section of codes under "Trial Juries" and pertains only to developing the "Jury List". It has been moved over to the section entitled "Jury Lists" and renumbered. The words written in bold type above have been stricken for the reason that the clerks can no longer go back into the list of registered voters and draw more names as this statute dictates. If the clerk is required to continue this practice until the required number of jurors is drawn, it would take a tremendous part of the year to perfect a jury pool for the court's use. Time does not allow this.

The judge's order for jurors to be drawn to compile a "Jury List" contains a number large enough to take into account that there are a number of people who have moved from the county, died, or for various reasons are unable to serve. Because this is taken into consideration, there is no need to draw names to replace those who are excused by the court. The language on page 4, lines 12 and 13 is stricken as being unnecessary because the language in 3-15-401, and 3-15-402(1) under "Jury Lists", page 1, which states that a jury term is for one year, is very specific.

RE: Page 5, line 1, at Judge Fagg's suggestion, the beginning phrase, "At the opening of court...", is stricken, as this phrase leads to confusion that there is an opening day of court, as opposed to simply calling jurors for a specific trial. Lines 4 through 7, on page 5, were also stricken as this appears to be duplicative language and already covered in other parts of the statute.

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)

Members Excused: Sen. Walter McNutt (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 244, HB 339, HB 374, HB
527, 3/20/1999
Executive Action: HB 115, HB 203, HB 244, HB
257, HB 308, HB 374, HB 382,
HB 396

HEARING ON HB 374

Sponsor: REP. JOAN HURDLE, HD 13, Billings

Proponents: Allen Horsfall, Montana Board of Crime Control
Sharon Hoff, Montana Catholic Conference
Al Smith, Citizen - Montana Abolition Coalition

Opponents: None

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, Billings, introduced HB 374 which makes several changes to the Youth Court Act. It requires that juveniles be afforded a hearing before they are tried as adults. Currently, they are simply transferred from juvenile court to adult court based on the severity of their crime. The county attorney automatically files a case of severe crime in the district court. Since this is too automatic, this bill requires that juveniles be afforded a hearing. The hearing needs to take place in district court because the direct file is connected to funding received by the Board of Crime Control.

The hearing involves a determination of public safety and also whether or not the needs of the juvenile offender can best be met in district court or by the youth court. An amendment is being offered which concerns crimes for which a youth may be at risk for the death penalty when tried in district court. When the subject of executing youth under 18 was brought up at a meeting of juvenile probation officers, there was utter silence. She believes the silence was directed at the idea that it could be legally possible to execute someone under 18. This was changed to age 16 in the House Judiciary Committee in an attempt to fold in another bill sponsored by **REP. LOREN SOFT**. This bill would have prohibited execution of mentally retarded persons. The only part that was folded into this bill was the provision involving a youth of age 16. She asked that this bill be restored to it's original form of 18 years of age.

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

Proponents' Testimony:

Allen Horsfall, Montana Board of Crime Control, explained that he has been informed by the federal government that if the direct file is handled wherein the county attorney may file directly into district court, that particular grant would not be in jeopardy in this state. This grant amounts to \$1.722 million for juvenile justice programs.

Sharon Hoff, Montana Catholic Conference, raised a concern regarding the age of execution of youth. She urged the Committee to adopt the amendment mentioned earlier. While there is no excuse for some of the crimes that happen, there are always mitigating circumstances and issues in their lives that may have pushed them to that point. Sixteen is a very young age to be sentenced to death and then having to spend twenty years on death

row before execution. We need to find ways to hold children accountable and yet remember that they are children.

Al Smith, Citizen - Montana Abolition Coalition, rose in support of the amendments offered. The original intent of the bill provided for 18 to be the age provided for in the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked for more information on the discussion in the House Committee where age 18 was changed to age 16. **REP. HURDLE** explained that the sole purpose was to fold in **REP. SOFT'S** bill which provided for youth age 16 or mentally retarded. The bills were not melded together but HB 374 did retain the age 16 provision.

SEN. BARTLETT asked why the bill was not folded into HB 374. **REP. HURDLE** responded that the concept of mentally retarded did not fit into HB 374. She was not in the meeting when HB 374 was passed out of Committee with the age 16 concept still in the bill.

Closing by Sponsor:

REP. HURDLE summarized that since 1976 there have been twelve men executed for crimes they committed as juveniles. The average length of stay on death row for those men was over twelve years. All had committed crimes at age 17. Montana is one of only a few states which allow youths to be executed in this fashion. It is very appropriate for this provision to be changed.

{Tape : 1; Side : A; Approx. Time Counter : 9.20}

HEARING ON HB 527

Sponsor: REP. HAL HARPER, HD 52, Helena

Proponents: Steve Browning, Anheuser Busch
Brenda Nordlund, Department of Justice
William Shear, Rocky Mountain Interlock Devices

Opponents: Lucas Foust, Lewis and Clark County Public
Defenders Office

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, introduced HB 527 which offers a better way of addressing the problem of drunk driving. When a person is charged with a DUI and loses his or her license, they usually drive anyway. They need to get to work or school. This bill involves having an interlock ignition device to be installed in the vehicle following a second or subsequent DUI. In the 1997 Legislative Session a bill was passed to allow this to be voluntary. It was only used a few times. There are 27 users in the state even though 1300 people could be using this device.

Following a second DUI, if the offender wants to drive it is necessary to have this device installed in his or her vehicle. The person needs to blow into the device before the car will start. There is a rolling retest on the device which makes the driver blow into the device again. There is a record of the rolling retest which includes the time, date, and alcohol content. These devices will allow a person to blow into the device three times before the car will refuse to start for 15 minutes.

A user has told him that classes he has attended provide theory on how to deal with his problem but this device gave him something he needed to deal with on a daily basis. It reminds him of his problem and helps to keep him straight because his child and wife depend on his ability to drive a vehicle.

The device costs approximately \$75 to install and remove. There is also a \$60 to \$65 per month charge. This is an effective way to get drunk drivers off the road. It allows them to be productive citizens.

{Tape : 1; Side : A; Approx. Time Counter : 9.25}

Proponents' Testimony:

Steve Browning, Anheuser Busch, commented that prior to 1997, some judges used ignition interlock devices as a part of their probationary power. The 1997 provision authorized these devices but they still have not been widely used. He provided two handouts, **EXHIBIT(jus65a01)** and **EXHIBIT(jus65a02)**. A major problem for traffic safety includes hard core drunk drivers, who represent less than one percent of the drivers on the road but are responsible for more than half of the road fatalities. Hard core drunk drivers drive at alcohol content levels that would be fatal for most people.

Brenda Nordlund, Department of Justice, claimed that in 1998, Montana recorded 5,746 DUIs or BAC (blood alcohol content) violations. Of this amount, 1,328 offenses were second or subsequent offenses. Only 27 offenders were sentenced by the courts, under the current discretionary section, to use an interlock device. The statistics for 1997 are worse. In 1997, there were 5,771 DUI or BAC offenders. Second or subsequent offenders amount to 1,389 and eight were sentenced to an interlock restriction.

This bill will change the model so the discretion to impose the ignition interlock on a second or subsequent offender no longer lies with the justice of the peace but instead will be part of the administrative license for relicensure. After a second or subsequent DUI, the driver's license is revoked for a period of one year. Under present law, the offender has the ability to receive a probationary license after serving three months of the one year period provided SR22 insurance has been filed, and the treatment required by the court has been completed.

This bill will allow drivers to receive their driver's license on a probationary status before the three month period. They will be eligible for a probationary drivers license once they complete treatment and provide proof of compliance with the ignition interlock device. This is optional in that the person may spend the one year revocation period without any driving privileges.

The reality of this population is that of the 1,300 second or subsequent DUI and BAC offenders in 1998, only 144 of them came back to the Motor Vehicle Division to ask for a probationary drivers license. A large number do not seek lawful driving privileges. This may give them the way to come back to the driving system in a lawful manner. It may provide the reenforcement they need to successfully overcome their disease of alcoholism.

{Tape : 1; Side : A; Approx. Time Counter : 9.37}

William Shear, Rocky Mountain Interlock Devices, explained that on the monthly printouts of this devices, if it is obvious that someone is blowing two times and failing and then have someone else blow into the device for them, a calibrated breath pulse can be added. This is a learned breath pulse and anyone else who blows into the system will not pass the test.

Opponents' Testimony:

Lucas Foust, Lewis and Clark County Public Defenders Office, commented that the vast majority of his clients are truly

indigent and have limited resources for interlock devices. A second offender DUI has committed a second offense within five years. This bill is not appropriate in that it goes after second offenders. It would dovetail better with a third offender. After the third offense the vehicle can be taken away. This bill affects poor people. His figures show that this device costs approximately \$170 per month. This bill will cause people to drive without a license.

He further reported from a memo from **Melissa Edwards, Public Defender's Office in Yellowstone County**. Her memo stated that Section Two of the bill would amend Section 61-5-208 to require that any individual who is convicted of a second or subsequent offense DUI or per se will have his or her license revoked for one year and "upon issuance of any restricted probationary license, during the period of revocation restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device." Many of her clients cannot afford to pay the installation and monthly usage fees. Her clients are often unable to pay rent and purchase food. Requiring them to pay for the installation and usage of the interlock device would place a heavy burden on many indigent clients. The proposed language would make it impossible for an individual to get even a probationary license without submitting to the interlock device. If you have money to fund the interlock ignition company, you can drive. If you do not have money, you cannot drive. Currently, the sentencing judge has discretion to restrict an individual to interlock driving. If the court is aware that the individual cannot afford the device, the judge usually does not impose it. Consequently, the individual loses his or her license and cannot get a probationary permit for 90 days. This 90 day requirement is an inconvenience, but in most cases it is preferable to paying the interlock fees. If the client can afford the device, the defendant usually requests the court to impose it on him. If this is done, the defendant does not lose his license but the license is restricted to interlock use. There is no need for a probationary license in such a case.

He asked that the language be changed from a second offense to a third offense. This would be a more appropriate way to handle the situation.

Questions from Committee Members and Responses:

SEN. HOLDEN asked the degree to which this would be mandatory?

REP. HARPER responded that after the second DUI within a five year period, it would be necessary to have this device.

SEN. HOLDEN remarked that his understanding is that the total cost would be shifted to the offender. **REP. HARPER** explained that the fiscal note shows \$1,800 for the Department of Justice from the General Fund. However, the fiscal note states that 70 people are incarcerated at a cost of approximately \$21,000 a year. This would amount to approximately \$1.5 million. By diverting 10 of these offenders from the prison system, the savings would amount to over \$200,000.

SEN. HOLDEN questioned the availability of the devices and/or maintenance of same in eastern Montana. **Mr. Shear** explained that they are the vendor for eastern Montana. They have mobile units and on two days a week they will make the loop.

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

If they have 50 people in an immediate area, they will be able to afford a center in this area and then would be available on a 24 hour basis.

SEN. HOLDEN asked for further clarification of the cost. **Mr. Shear** explained there would be a one-time cost of \$75 to install and remove. There is a \$65 a month fee. There is a \$5 a month insurance fee which they may choose to take. They are responsible for the unit if it is damaged. This would amount to \$2.15 a day. This is the cost of a beer. The parent company allows two persons per one hundred for an indigent program. This would be totally free to the individual. They also cover one-half of the cost of another two persons per one hundred.

CHAIRMAN GROSFIELD asked **Judge McLean** if he currently used this provision in the law. **Judge McLean** explained that he has used it once in the past year. The interlock devices are not commonly known throughout the judiciary as being readily available in Montana. This bill would make all the judiciary aware that it is readily available. He believes the judiciary would use this very readily and the passage of the bill will reduce the overall costs of the DUIs in the state.

CHAIRMAN GROSFIELD remarked that people who are charged with a third offense would be less able to afford the device than they would have at a second offense. By keeping this at the second offense, the third offense may be avoided. **Mr. Foust** remarked that the second offense occurs for people who are your neighbors. Sometimes people make two mistakes within five years. A third or subsequent offender clearly has an alcohol abuse problem. He is not entirely opposed to requiring interlock devices. When requiring an interlock device after a second offense, people who are not chronic users will be included.

CHAIRMAN GROSFIELD questioned whether the judges would have a concern with not having the discretion to make a decision in this instance. **Judge McLean** believed that the person who receives a second DUI has no concept of the cost to society at large. If someone is careless enough to obtain a second DUI conviction, that individual must face some serious consequences and there should be mandatory provisions other than incarceration.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

Closing by Sponsor:

REP. HARPER summarized that this is a method to control drunk drivers. He resisted the suggested amendments. By the time someone has a second DUI, serious help is necessary. This protects society from adverse impacts and encourages an individual to seek help.

HEARING ON HB 339

Sponsor: **REP. PAUL SLITER, HD 76, Somers**

Proponents: **John Warner, Montana Judges Association**
Candace Payne, State Bar of Montana
Al Smith, Montana Trial Lawyers Association

Opponents: **None**

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Somers, introduced HB 339 which creates an interim study of reapportionment of the judicial districts in the state. Senate Bill 273, which has passed the Senate, adds one judicial district and three judges to our judicial system. This bill would ask the interim committee on Law Justice and Indian Affairs to make a determination as to whether reapportionment should take place and draft legislation.

On page 1, line 18, the **Judges Association** has raised a concern that the scope of the study would be too narrow based on population estimates and caseload. He proposed a conceptual amendment that on line 18 following the word "estimate", the word "and" be stricken and a comma be inserted. On line 19, strike the period after the word "load" and insert a comma and "and on other considerations". This would give the committee the ability to take all the pertinent factors into consideration to make their decision.

Proponents' Testimony:

John Warner, Montana Judges Association, remarked that the bill as originally written would consider caseload and population, which are obvious considerations. Some of the judges have lower caseloads, but have a huge area to cover and spend a large amount of their time traveling. Judicial districts run deep and are political. There are 40 judges in the state, but 21 judicial districts, which is an historical accident. Judges are elected officials. He suggested that this study may need to be undertaken by a special study committee formed for this purpose. This committee should include county commissioners as well as legislators.

Candace Payne, State Bar of Montana, rose in support of HB 339. The 1998 annual report of the judiciary shows a huge disparity in caseloads. In one of the urban districts in Montana, the judges have 506 cases per judge. In another, each judge has 1,200 cases and in a third, the judge has 1,300 cases. Much of the imbalance has to do with population changes within our state. Our citizens have a constitutional right to a speedy trial and this right is being short changed in some of Montana's busier judicial districts.

Al Smith, Montana Trial Lawyers Association, rose in support of the bill and the amendment proposed by **REP. SLITER**. He added that the people most impacted by the delays in the courts are the citizens of Montana. This is a good first step forward.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked the sponsor his view on the suggestions made by **Judge Warner**. **REP. SLITER** believed that the amendment would address the windshield time of judges. The geography of the districts will be a consideration in redistricting. Considerations relating to campaign practices for judges may not be appropriate in determining redistricting. If this Committee sees fit to create an interim study committee where individuals other than legislators could be appointed, that is the Committee's privilege. He added that when an interim study committee is created, it is placed into a pool and prioritized by the membership of both Houses. He would not like to see this study go through the appropriations considerations that might render it larger than the legislature would adopt.

SEN. HALLIGAN clarified that under SB 11, subcommittees could be created on standing committees that will allow for two public members.

SEN. BARTLETT added that she had come up with several items that might impact a decision about an appropriate judicial district. One of the items was if the split between the number of civil cases versus the number of criminal cases in a particular district has significance. **Judge Warner** stated that would be of significance. Criminal law cases are some of the cases of shortest duration. Domestic relations cases can drag on for years. A products liability case can also be very lengthy. Family law cases are more susceptible to alternative dispute resolution than other cases.

SEN. BARTLETT added that the use of special masters, settlement conferences, and other techniques to handle the workload could make a difference. **Judge Warner** maintained that this spoke to the need for judges and county commissioners to serve on the interim committee.

SEN. BARTLETT remarked that her understanding of the restructuring of interim committees is because the legislature placed studies into bills and then tried to find the necessary funding. The workload for the staff ultimately outstripped their capability to manage the same. She suggested an amendment using the standard language stating that the council is requested to designate an appropriate legislative interim committee. **REP. SLITER** resisted the amendment. If he thought this should be an option to the legislature, it would have taken the form of a resolution. We currently have a bill which adds judges. Assuming that bill passes, the problem is well known. This is a study that needs to be conducted this interim.

{Tape : 2; Side : A; Approx. Time Counter : 10.22}

SEN. BARTLETT maintained that everyone who carries a study resolution feels strongly about it. If everyone uses the word "shall", how do we avoid the situation where the resources available for interim studies are not sufficient to carry out what the council is required to carry out. **REP. SLITER** asserted that if the amendment is offered, it is his duty to resist it.

Closing by Sponsor:

REP. SLITER claimed that with the passage of SB 273 in the Senate, it is clearly recognized that there is a disparity amongst districts. If we are going to spend money by adding new judges, we owe it to ourselves to look at the big picture.

{Tape : 2; Side : A; Approx. Time Counter : 10.25}

HEARING ON HB 244

Sponsor: REP. TOM FACEY, HD 67, Missoula

Proponents: Ed McLean, Missoula District Judge, District
Judges Association
Judge Bob Boyd, Anaconda
John Warner, Montana Judges Association
Al Smith, Montana Trial Lawyers Association
Michael Conner, Executive Director of the Public
Employees Retirement System

Opponents: None

Opening Statement by Sponsor:

REP. TOM FACEY, HD 67, Missoula, introduced HB 244 which revises pay for substitute judges. The key to the bill is that the hourly rate now paid to judges is now \$12.13 to \$24.78. Currently judges are paid \$37.00 per hour and subtracted from that rate is their retirement pay. This bill would stop the practice of subtracting the retirement pay.

Proponents' Testimony:

Ed McLean, Missoula District Judge, District Judges Association, remarked that there are 25 to 30 retired judges throughout the state. Only two retired judges are willing to serve. Part of the reason is that in order to draw retirement pay, a judge has to be 65 years of age. When a judge sits in the stead of an active judge, that judge receives only the difference between his or her retirement and that of an active sitting judge. When judges become ill, one of the two judges willing to serve are asked to work up to three or four months at a time just to keep the caseload flowing. When a judge is substituted, a judge from another jurisdiction is called in. He added that the courts are very cognizant of the financial constraints of the legislature.

Judge Bob Boyd, Anaconda, stated that he believes he has an obligation to serve as a retired judge. If he breaks even doing this, he is lucky. Since he has been on the bench, he has been the permanent alternate on the Sentence Review Division of the Supreme Court. While he enjoys the work, it does take time.

John Warner, Montana Judges Association, remarked that retired judges have taken on cases to supplement their income. This eliminates them from the pool. If a retired judge has served the necessary time and paid into the retirement fund, he should still be paid the current salary when called into service.

Al Smith, Montana Trial Lawyers Association, rose in support of the bill which provides fair compensation. Retired judges are a very valuable resource that is lost if adequate compensation is not paid.

Michael Conner, Executive Director of the Public Employees Retirement System, remarked that they want to make sure they maintain the plan qualification with the IRS. They applied to the IRS for a private letter ruling to make sure that plan qualification is maintained. One of the issues they have looked at in the retirement system is the call back to service. Is it temporary in nature? This bill addresses the fact that it is temporary in nature. Last year 1300 hours were paid out to two judges.

Opponents' Testimony: None

{Tape : 2; Side : A; Approx. Time Counter : 10.40}

Questions from Committee Members and Responses:

SEN. BISHOP remarked that the bill looked like it was calling for involuntary servitude. On line 12, the words "must be called" are used. He added that line 11 speaks to voluntary retirement. **Judge Boyd** remarked that if a judge lost in an election he or she would be involuntarily retired and would not be called.

SEN. BISHOP questioned if a retired judge would lose part of his or her retirement. **Judge Boyd** stated there was no such requirement. The bill would limit a retired judge to 180 days in a calendar year.

Closing by Sponsor:

REP. FACEY remarked that the wording "voluntary/involuntary" was added by the legislature some time ago because certain people in the community did not want judges who were defeated in an election to be trying cases.

EXECUTIVE ACTION ON HB 374

Motion/Vote: **SEN. GRIMES** moved that **AMENDMENT HB037401.av1, EXHIBIT(jus65a03)**, BE CONCURRED IN. Motion carried 6-1 with Holden voting no.

Motion: **SEN. HALLIGAN** moved that **HB 374 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. HALLIGAN noted that he is not necessarily happy with the new hearing requirements specified by this bill. He believes it is important for judges, prosecutors, public defenders, and family members to be able to eventually come in and argue that a child ought not to be dealt with in district court. It will add a lot of time to cases.

SEN. GRIMES the time delay anticipated. **SEN. HALLIGAN** estimated a thirty day delay.

Vote: Motion carried 7-1 with Grimes voting no.
{Tape : 3; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB 244

Motion/Vote: **SEN. HALLIGAN** moved that **HB 244 BE CONCURRED IN.**
Motion carried 8-0.

EXECUTIVE ACTION ON HB 527

Motion: **SEN. GRIMES** moved that **HB 527 BE CONCURRED IN.**

Discussion:

SEN. BARTLETT asked why revocation of a license is being stricken in several places of the bill and being replaced with suspension of a license. An answer was not given.

SEN. HALLIGAN noted that the ignition interlock probably costs a great deal more than what was presented to the Committee. If ignition interlock becomes mandatory, public funds will more than likely need to be made available.

SEN. JABS asked if this bill would require a mandatory interlock after the second DUI offence. **CHAIRMAN GROSFIELD** commented that if a person wanted to drive legally, they would need to request a temporary license. In order to get the temporary license after the second DUI, they would need to agree to put an interlock device on their car.

SEN. HALLIGAN noted that a contempt citation will be filed by a judge if an individual refuses to comply with regulations requiring interlock installation. If the offender doesn't have the money, they will have to come back to the courts again and again, tying up the system, and all the while still be driving.

SEN. GRIMES noted that the judges are not against these devices. They just are not aware of them and don't realize that they are available. We need to be careful that we are not mandating something without an exclusion for financial circumstances, or judicial discretion. It is also important to keep in mind that if there are a sufficient number of resources available for these interlock devices, they can be purchased from any number of vendors at competitive prices. **CHAIRMAN GROSFIELD** noted that the free market system should take care of that issue.

CHAIRMAN GROSFIELD said that it would be better to hold off executive action on this bill until a later time.

SEN. GRIMES withdrew his motion.

EXECUTIVE ACTION ON HB 308

Motion/Vote: **SEN. DOHERTY** moved that **HB 308 BE CONCURRED IN.**

Motion carried 7-0.

{Tape : 3; Side : A; Approx. Time Counter : 12.7 - 13.5}

EXECUTIVE ACTION ON HB 382

Motion: **SEN. HALLIGAN** moved that **HB 382 BE CONCURRED IN.**

Discussion:

SEN. BISHOP asked if it would be possible to select jurors without using a list of electors. **SEN. HALLIGAN** maintained that it was all part of being involved in the democratic process. The jury is the buffer between the power of the state and the smallest individual. If someone doesn't want to take part in the incredible responsibility jury appointment establishes, then so be it.

SEN. BARTLETT noted that in some states drivers licenses, or a combination of drivers license and voter registration lists, are used in order to choose jurors.

Vote: Motion **carried 7-0.**

EXECUTIVE ACTION ON HB 115

Motion/Vote: **SEN. HALLIGAN** moved **AMENDMENT HB011505.AVL, EXHIBIT(jus65a04), BE CONCURRED IN.** Motion carried 7-0.

Motion/Vote: **SEN. BARTLETT** moved that **AMENDMENT HB011502.AVL, EXHIBIT(jus65a05), BE CONCURRED IN.** Motion carried 8-0.

Motion: SEN. HALLIGAN moved that HB 115 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HOLDEN asked if there were any provisions for victim notification on this bill. **Valencia Lane** responded that was an issue put into the Departments amendments in the case of an unconditional discharge. She added that **SEN. BARTLETT'S** amendments took out the unconditional discharge, thereby eliminating the need for that amendment.

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON HB 203

Motion/Vote: SEN. BARTLETT moved that AMENDMENT HB020303.AVL, **EXHIBIT**(jus65a06), BE CONCURRED IN. Motion carried 8-0.

Motion/Vote: SEN. BARTLETT moved that HB 203 BE CONCURRED IN AS AMENDED. Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 27.5 - 36.2}

EXECUTIVE ACTION ON HB 257

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED.

Motion/Vote: SEN. HALLIGAN moved that AMENDMENT HB025701.AVL, **EXHIBIT**(jus65a07), BE CONCURRED IN. Motion carried 8-0.

Motion: SEN. HOLDEN moved that HB 257 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN GROSFIELD asked if this bill is essentially a sentence enhancement. There was no response offered for the record.

Vote: Motion carried 8-0.

{Tape : 3; Side : A; Approx. Time Counter : 36.2 - 43.2}

EXECUTIVE ACTION ON HB 527

Discussion:

SEN. HALLIGAN asked **Mr. Browning** if he had considered requiring the interlock system after the third and subsequent offense rather than the second. **Mr. Browning** remarked that originally it

was to be required after the first offense if the individuals BAC level was above 0.18. The determination to have it apply to second and subsequent offences was that the first offense would be discretionary.

SEN. HALLIGAN asked why the judges are not using this now. **Mr. Browning** said that the problem is the lack of awareness. The expense has not entered into the discussion as a problem.

SEN. HALLIGAN inquired as to the procedure if the offender did not have the money. He asked if hardship language could be added that would allow limited discretion by the judge in specific cases. **Mr. Browning** related that some people testified that if an offender has the money to consume alcohol, they will have the money to pay for the ignition interlock device. Others testified that having the interlock placed on their vehicle was the best money spent for their problem.

SEN. HALLIGAN asked if it would jeopardize the bill if hardship language was added. **Mr. Browning** explained the approach that the bill takes is an administrative approach rather than a judicial approach.

EXECUTIVE ACTION ON HB 396

Motion: **SEN. DOHERTY** moved that **AMENDMENT HB039602.av1**, **EXHIBIT(jus65a08)**, **WITH THE EXCEPTION OF AMENDMENT NUMBER FIVE**, **BE CONCURRED IN.**

Discussion:

SEN. HOLDEN asked if the one-year reporting time could be decreased. **SEN. DOHERTY** agreed to a six month time frame.

SEN. HOLDEN hoped that notification would take place within a few days of injury. He added that time casts doubt on the validity of the injury.

CHAIRMAN GROSFIELD asked what type of injury would need a six month time length. **SEN. DOHERTY** suggested back or disk injuries. **SEN. HALLIGAN** added that many personal injury accidents are filed close to when the statute of limitations is up because the full extent of injuries are not known until that time.

CHAIRMAN GROSFIELD questioned the process if the injured person were unable to report due to an injury. **SEN. DOHERTY** said that his amendment would include individuals unable to report due to their injury.

SEN. DOHERTY added that this bill eliminates the limit on recovery. **SEN. GRIMES** believed that there may be a value to placing a limitation which would provide some disincentive for people to file false claims on the operator. **SEN. DOHERTY** insisted that frivolous claims are dealt with in the legal system under Rule 11.

Vote: Motion **carried 5-1 with Grimes voting no.**

Motion: **SEN. DOHERTY** moved that **HB 396 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. BARTLETT questioned whether including a person immediately leaving the vicinity of an amusement ride may be too broad.

SEN. DOHERTY withdrew his motion.

Substitute Motion: **SEN. DOHERTY** moved that **HB039603.AVL, EXHIBIT(jus65a09), BE CONCURRED IN.**

Vote: Motion **carried 8-0.**

SEN. DOHERTY withdrew his motion on HB 396 as amended.

ADJOURNMENT

Adjournment: 12.05 P.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus65aad)